

STATE OF MICHIGAN
COURT OF APPEALS

In re ARIEL YOSEFF DUBOV, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

ARIEL YOSEFF DUBOV,

Respondent-Appellee.

UNPUBLISHED

March 15, 2007

No. 265642

Oakland Circuit Court

LC No. 04-693636-DL

Before: Markey, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

This case is before us for consideration on leave granted pursuant to order of our Supreme Court, *In re Dubov*, 474 Mich 877 (2005), following this Court's initial denial of petitioner's application for leave to appeal. Petitioner challenges the decision of the circuit court family division to place this case on its juvenile delinquency consent calendar rather than on the formal calendar to adjudicate an allegation of operating under the influence of liquor (OUIL). We dismiss this appeal as moot: respondent has reached 19 years of age while this appeal has been pending, consequently, the circuit court no longer has jurisdiction over him in this case.

It is undisputed that respondent's birth date is February 7, 1988, so he became 19 years old on February 7, 2007. This fact is critical because under MCL 712A.2a(1) a trial court's jurisdiction over a respondent in a juvenile delinquency case generally terminates on the respondent's nineteenth birthday. See *In re Reiswitz*, 236 Mich App 158, 164; 600 NW2d 135 (1999) (noting that pursuant to MCL 712A.2a(1) jurisdiction over a juvenile respondent terminated on the respondent's nineteenth birthday). Particularly, MCL 712A.2a(1) provides:

Except as otherwise provided in subsection (2),^[1] if the court has exercised

¹ MCL 712A.2a(2) authorizes court jurisdiction to continue "until the juvenile is 21 years of age" with regard to offenses that, if committed by an adult, would constitute violations or attempted violations of certain enumerated statutory sections. Subsection (2) is inapplicable to this case because respondent was charged with conduct that would constitute a violation MCL 257.625 if

(continued...)

jurisdiction over a juvenile under section 2(a) or (b) of this chapter, jurisdiction shall continue for a period of 2 years beyond the maximum age of jurisdiction conferred under section 2 of this chapter [MCL 712A.2], unless the juvenile is released sooner by court order.

MCL 712A.2(a)(1) provides for jurisdiction over “a juvenile under 17 years of age” where the juvenile “has violated any municipal ordinance or law of the state or of the United States.” Thus, the maximum age of jurisdiction under MCL 712A.2 as to a juvenile in a case such as this one that concerns a violation of a state law is the day before the juvenile’s seventeenth birthday. Accordingly, under MCL 712A.2a(1), because the trial court exercised jurisdiction in this case before respondent’s seventeenth birthday, its jurisdiction could continue for two additional years past the maximum age of jurisdiction, i.e., until the day before respondent’s nineteenth birthday. It follows that the trial court’s jurisdiction as to respondent in this juvenile delinquency proceeding terminated on his nineteenth birthday. *In re Reiswitz, supra* at 164.²

It further follows from the above analysis that this appeal has been rendered moot because this Court can no longer provide meaningful relief to petitioner given the circuit court’s lack of jurisdiction. See *Eller v Metro Industrial Contracting, Inc.*, 261 Mich App 569, 571; 683 NW2d 242 (2004) (“An issue is moot and should not be reached if a court can no longer fashion a remedy.”). Because the circuit court family division no longer has jurisdiction over respondent, it cannot now place this delinquency case on its formal calendar or take any other action toward further adjudication or disposition of respondent. Thus, we cannot properly direct the circuit court to provide the relief petitioner requests. Accordingly, this case is moot because of this Court’s inability to provide petitioner with meaningful relief.

We recognize that one of petitioner’s reasons for seeking to move this case from the consent calendar to the formal docket was to require the lower court would to forward an abstract regarding this case to the Secretary of State under MCL 712A.2b(d), which provides:

When a juvenile is accused of an act that constitutes a violation of the Michigan vehicle code . . . the following procedure applies, any other provision of this chapter notwithstanding:

* * *

(...continued)

he were an adult at the time of the incident and this statute is not one of the enumerated sections.

² We note the holding of *In re Reiswitz, supra*, that the probate court in juvenile delinquency proceedings had authority under MCL 712A.18(2) to enforce a preexisting reimbursement order against a parent of a juvenile after the juvenile became 19 years old and thus was no longer under the court’s jurisdiction, is inapplicable. This Court recognized only a narrow exception to a court’s lack of jurisdiction in juvenile delinquency proceedings regarding reimbursement orders. Indeed, the panel in that case distinguished this from a court’s lack of authority to affect a juvenile’s disposition after jurisdiction over the juvenile had ended. *In re Reiswitz, supra* at 173-174.

(d) Within 14 days after entry of a court order of disposition for a juvenile found to be within this chapter, the court shall prepare and forward an abstract of the record of the court for the case in accordance with [MCL 257.732.]³

But this statute requires an order of disposition to trigger the requirement that the family division forward an abstract to the Secretary of State. A review of the record reflects that an order of disposition has not been entered in this case.⁴ Because as discussed above the trial court no longer has jurisdiction over respondent in this case, it cannot properly enter an order of disposition and the reporting requirement of MCL 712A.2b(d) cannot properly be triggered. Thus, MCL 712A.2b(d) does not affect our conclusion that this appeal has become moot.

Petitioner also expresses concern that if the trial court's placement of this case on the consent calendar is not reversed, all records of this case might be destroyed under MCR 3.932(C)(7), which provides in pertinent part, "Upon successful completion by the juvenile of the consent calendar case plan, the court shall close the case and may destroy all records of the proceeding." This court rule provision plainly allows destruction of all records of a case only if the trial court finds that the juvenile successfully completed a consent calendar case plan. Because the trial court no longer has jurisdiction over respondent, it lacks jurisdiction to determine that he successfully completed such a case plan. Accordingly, MCR 3.932(C)(7) does not impact our conclusion that this appeal has been rendered moot because the trial court cannot properly order destruction of records in this case under that subrule.

Finally, we note that this case is not a proper venue in which to apply the principle that we may review a moot issue if it "is one of public significance that is likely to recur, yet evade judicial review." *Federated Publications, Inc v City of Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002). It is apparent that significant delay occurred in this case because of a combination of factors: petitioner applied for leave to appeal being filed on a delayed basis, this Court's initially denied that application; and time passed while our Supreme Court considered this matter before its remand order. It is readily conceivable that circumstances like those here could recur without such delay and, accordingly, with the appeal progressing to a decision on the merits while the juvenile was under 19 years old.

We dismiss this appeal because it is moot.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Kirsten Frank Kelly

³ MCL 257.732 generally provides for abstracts of certain convictions to be forwarded to the Secretary of State.

⁴ Our Supreme Court stayed lower court proceedings in this case on September 2, 2005. Thus, no order of disposition could properly have been entered while this case was pending on appeal.